IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO.1069 OF 2006.

Seth Govindraoji Ayurved Mahavidyalaya ..Petitioner
vs.
Vimal S. Nagare ..Respondent

WITH

WRIT PETITION NO. 1070 OF 2006.

Seth Govindraoji Ayurved Mahavidyalaya ..Petitioner.
vs.
Ganesh P. Kale. ..Respondent

WITH

WRIT PETITION NO. 1072 OF 2006.

Seth Sakharam Premchand Jain
Aushadhalaya & Rungnalaya ..Petitioner
vs.
Neelkanth Shankar Ranade ..Respondent.

Ms. Manjiri Parasnis i/b. Mr.G.S.Godbole
for the petitioner.

Shri Ameya Tamhane i/b. Ms.Seema Sarnaik
for respondent No. 1.

....

CORAM : V.C. DAGA, J.

DATED : 7th June 2006.

JUDGMENT :

1. The short question that arises for consideration is: whether teachers of an educational institutions can be held to be on employees under Section 2 (e) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act" for short) to enable the teachers to claim gratuity?

2. All petitions, involve common question of law and are founded on identical facts so a common judgment willl dispose of all these petitions. The facts for the sake of clarity are taken from Writ Petition No. 1069 of 2005 filed against Smt. Vimal S.Nagre.

BACKGROUND FACTS :-

3. The present petitions, at the instance of the petitioner - the Educational Institution, are directed against the judgment and order dated 16.12.2004 passed by the respondent No.2, the Controlling Authority and Assistant Commissioner of Labour, Solapur holding that the teachers, (the respondent no.1), involved in these petitions are entitled to claim gratuity under the provisions of the Act.

4. The factual matrix reveals that the respondent no.1 was a professor in the petitioner College viz; Sheth Govindraoji

Ayurved Mahavidalaya, run by a private Trust the college receives 100% grant-in-aid from the Government of Maharashtra.

5. The respondent no.1 has worked in the petitioner-college from 1.1.1967 to 31.10.1989 on the post of Professor. The respondent no.1 after 12 years of his retirement, moved an application bearing No. PGA/ACL/40 of 2001 before the respondent no.2 under section 7(4) read with section 10 (1) of the Act without seeking condonation of delay in moving such application.

6. On being noticed the petitioner-College though initially appeared before respondent No.2 but chose to remain absent in the later part of the proceedings and allowed it to proceed exparte. The respondent no.2 in exercise of its suo moto powers, condoned delay in filing application, allowed claim for gratuity on merit and directed the petitioner-college to pay gratuity to the respondent no.1, the former teacher of the petitioner-college by impugned judgment and order dated 16.12.2004.

7. Being aggrieved by the aforesaid judgment and order, petitioner- College has invoked writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India,

contending that the respondent no.2 had no jurisdiction to entertain and try the application seeking benefits of the provisions of the Act, as the same was not maintinable under the Act.

RIVAL SUBMISSIONS:-

8. Ms. Manjiri Parasnis, learned counsel appearing for the petitioner would contend that the order of the respondent no.2 is non-est and without jurisdiction. According to her, the respondent no.2 completely overlooked the Apex Court judgment in the case of **Ahmadabad (P) Primary Teachers Association Vs. Administrative Officer** reported in 2004 I CLR 495, wherein the Court ruled that the teachers do not fall within the sweep of the definition of the word "employee" given under the Act. In her submission, teachers "cannot fall within the definition of "Workman" or employee especially considering the nature of job rendered and duties discharged by them.

9. Ms. Parasnis, learned counsel for the petitioner further submits that the respondent no.2 was not justified in condoning the delay of about more than twelve years; that too; in absence of any prayer for condonation of delay. In her submission, the order of the respondent No.2 directing condonation of delay in

filing application under the provisions of the Act itself is erroneous as such the same is liable to be quashed and set aside.

10. Per contra, Ms. Seema Sarnaik, learned counsel appearing for respondent no.1 would submit that the petitioner-college being an educational institute is an establishment notified under section 1(3) of the Act. She would further submit that respondent no.1 was well within the sweep of section 2(e) of the Act since respondent no.1, had to work in the capacity of Doctor in OPD and as Teacher in class room to teach the students taking education in the college. According to her, nature of the duties of the respondent no.1 obliged him to attend OPD of the hospital in the morning hours in addition to the job of teaching in the college during the day time. According to Ms. Sarnaik, the nature of the duties would clearly bring the person like the respondent no.1 within the sweep of definition of "employee" given under the Act. In support of her submission, she relied upon the judgement in the case of **Madar Union Sanatorium and Hospiotal vs. M.B. Sathe and others** reported in 1986(2) LLJ 135.

11. Ms. Sarnaik further urged that in spite of due notice by respondent no.2, petitioner college chose to remain absent though appearded in the initial stage of the proceedings and

further failed to file written statement replying contentions raised in the application as such, considering deliberate negligence on the part of the petitioner-college to contest application seeking gratuity, this is not a fit case wherein this Court should exercise its writ jurisdiction in favour of the petitioiner.

12. Ms. Sarnaik further submits that on the face of availability of alternate remedy by way of an appeal u/s 7 of the Act to the Appropriate Government, the petitioner-college should not be allowed to invoke writ jurisdiction of this Court. At any rate, this Court should not exercise writ jurisdiction, in favour of the petitioner-college. In the submission of Mrs. Sarnaik, the judgment of the Apex Court in the case of Ahmedabad (P) Primary Teachers Association (cited supra) is applicable to the primary teachers and not to the teachers falling in the category of respondent no.1. She, thus ,prayed for dismissal of the petition with costs.

THE ISSUE :-

13. In view of the rival submissions at the bar, the only question that crops-up for consideration is: Whether the teachers of an educational institutions can be brought within the purview of the Act?

CONSIDERATION:_

14. The Statements of Objects and Reasons of the Act justifying the statutory grant of gratuity states thus :-

> "An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto".

15. The reading of the aforesaid Objects and Reasons of the Act, there cannot be any dispute that while construing the provisions of the Payment of Gratuity Act, a beneficial interpretation has to be preferred which advances the Object of the Act. Nevertheless it is to be borne in mind that a beneficial interpretation should be applied only to those employment which are intended to be covered by the Act and not to others.

16. The expression `employee' has been defined under section 2 (e) of the Act thus :-

> "2(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether or not such person is employed in a managerial or administrative capacity".

17. The aforesaid definition was a subject matter of legal

debate before various Courts including this court from time to time.

18. The Division Bench of this Court had an occasion to deal with the provisions of the Payment of Gratuity Act in the case of **P.D. Rao Deo vs. Pri. St.P.C.H.School and ors.** reported in 1997 II LLJ 1050. The Division Bench had distinguished the earlier judgment of this Court in the case of **Miss. A. Sunderambal V. Govt. of Goa, Daman and Diu and others** reported in 1983-II-LLJ-491 which was subsequently affirmed by the Supreme Court by another decision reported in **A. Sundarambai vs. Govt. of Goa, Daman and Diu** AIR 1988 SC 1700. In that case, the petitioner was employed as teacher in the primary school which was unaided. The Division Bench of this Court after considering the decision in the case of Sunderambai (supra) expressed an opinion that:

> ".... if the construction of the word `employee' was required to be made with reference to the scheme of the object of the Act, it cannot be gainsaid that the object of the Act is to provide for a scheme for the payment of gratuity to certain categories of employees engaged in certain specified types of concerns. The gratuity is, in its essence, a payment in consideration of past services paid only at the end of the said service when the employment terminates. The definition of `employee' is wide enough to include a teacher indulging in teaching activities in an educational institution, which in our view would be clearly covered by the definition of establishment."

19. The Division Bench in the above case also made a reference to the decision of a learned Single Judge of this Court (Nagpur Bench) in the matter of **Principal, Bharatitya Mahavidyalaya, Amravati and others vs. Ramkrishna Wasudeo Lahudkar** reported in 1994-II LLJ 556 in which learned Single Judge (Sirpurkar, J. as he then was) took a view that the Payment of Gratuity Act was applicable to an educational establishment.

20. The judgment of the Division Bench in the case of **P.D. Rao Deo** (supra) was followed by the another learned Single Judge (Kochar, J. as he then was) of this Court in the case of **General Education Academy, Chembur, Mumbai Vs. S.V. Desai and others** reported in 2001-II-LLJ 273; wherein he was pleased to hold that the definition in Payment of Gratuity Act covers the teachers employed in the schools. They were held entitled to gratuity.

21. At this juncture, it would not be out of place to mention that when the learned Division Bench had heard the above petition filed by Mr. P.D.Rao Deo (supra) the Supreme Court judgment in the case of **Haryana Unrecognised Schools Association Vs. State of Haryana** reported in (1996) 4 SCC 225, was not brought to its notice wherein the Supreme Court was pleased to hold that the teachers of an educational institution are

not employed to do any skilled or unskilled or manual or clerical work and therefore, they could not be treated as an employee falling under Section 2(i) of the Minimum Wages Act, 1948.

22. In the aforesaid judgment, the Supreme Court has followed its earlier decision in the case of **Ms. A. Sunderambal** (cited supra). However, the aforesaid judgment of the **Haryana Unrecognised Schools Association** (supra) was cited before the learned Single Judge when the petition filed by the General Educatiion Academy was heard by him. However, learned Single Judge was pleased to distinguish the aforesaid judgment of the Supreme Court holding that the provisions of payment of Gratuity Act stand on different footing than that of the Minimum Wages Act.

23. The question involved in the present petitions was also subject matter of consideration by the Gujarat High Court in the case of **Shantiben L. Christian Vs. Administrative Officer** reported in 2001-II-LLJ 1007, wherein Gujarat High Court was pleased to hold that the teacher would not fall within the scope of definition of "employee" given under the Payment of Gratuity Act. The Gujarat High Court ruled that work of teacher to impart education cannot be considered as a skilled or unskilled, manual or as supervisory or technical or clerical in nature. The Gujarat High Court did not agree with the view taken by the Division

Bench of this Court in the case of **P.D.Rao Deo Vs. Pri. St.P.C. H. School and Ors.** (supra) and observed that the Supreme Court judgment in the case of **Harayana Unrecognised Schools Association** (cited supra) was not brought to the notice of the Division Bench when the matter was heard and decided.

24. Having taken survey of the decided cases, now the question which needs consideration is: Whether the law laid down by this Court can be said to be a good law as on date, in view of subsequent judgment of the Apex Court in the case of **Ahmedabad (P.) Primary Teachers Association** (cited supra).

25. The Apex Court in the aforesaid judgment dealt with the definition of the "employee" contained in Section 2 (e) of the Act and held as under:-

> "On comparison of various definition clauses of word `employee' in different enactments, with due regard to different aims and objects of various labour legislations, it is observed that even on plain construction of the words and expressions used in definition clause 2 (e) of the Act, `teachers' who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act. Teachers do not answer description of being employees who are `skilled', `semi-skilled' or `unskilled'. Even if these words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause trained or untrained teachers are not `skilled',

> `semi-skilled', `unskilled', `manual', `supervisory', `technical' or `clerical' employees. They are also not employed in `managerial' or `administrative' capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in `managerial' or `administrative' capacity. The teachers are clearly not intended to be covered by the definition of `employee'.

The Apex Court further observed as under:

> “The Legislature was alive to various kinds of definitions of word `employee' contained in various labour enactments whch were filed prior to the Payment of Wages Act, 1972. If it intended to cover in the definition of `employee' all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees' Provident Funds Act, 1952 which defines `employee' to mean`any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment..' Non-use of such wide language in the definition of `employee' in Section 2 (e) of the Act of 1972 reinforces conclusion that teachers are clearly not covered in the definition.”

26. In view of the aforesaid judgment of the Apex Court the Teachers do not answer description of being employees falling in the either of the categories prescribed under section 2(e) of the Act. The person not engaged to do any skilled, semiskilled, manual supervisory, technical or clerical work is not coveredd by the definition of “employee”. The work of a teacher to impart edudcation cannot be considered to be skilled or unskilled,

manual, supervisory technical or clerical work. In this view of the matter, the petitioner can hardly be said to be an employee falling within the meaning of the provisions of the Act. The Apex Court has followed its earlier judgment delivered in the case of **Haryana Unrecognised Schools Association** (supra).

27. Now, I propose to deal with the last submission made by Ms. Sarnaik learned counsel for respondent no.1 that the teachers employed in the petitioner College were required to work in dual capacity i.e. as doctor as well as teacher; as such they can be treated as employees falling within the sweep of section 2(e) of the Act. In my considered opinion it can hardly change the fate of these petitions in view of the fact that the basic purpose of the establishment of the petitioner-College is to impart medical education. The respondent no.1 and similarly circumstanced persons were employed to teach the medical students. The OPD of petitioner hospital is the part of the College imparting medical college. The dominant purpose and object of the college is to impart medical ceducation. The respondent No.1 is basically employed as a Professor to teach medical students. The respondent No.1 was required to work in the OPD of the hospital as a part of practical teaching programme. In this view of the matter, the fact that the respondent No.1 was required to discharge duties in dual capacity can hardly be said to be a factor going in favour of

respondent No.1 so as to bring him within the sweep of the provisions of section 2(e) of the Act. The submission made is without any substance.

28. In the aforesaid backdrop, the impugned judgments and orders dated 16.12.2004 in all these petiltions are liable to be quashed and set aside. In the result, all the petitions are allowed. Rule is made absolute in all petitioins in terms of prayer clauses (a) and (b) with no order as to costs.

(V.C.DAGA, J.)